IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1663 of 1994

For Approval and Signature:

HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

HASHMUKHBHAI KANTILAL PATEL - Appellant(s)
Versus
GULAMKADAR ABDULHAKIM SHAIKH & 1 - Defendant(s)

==========

Appearance :

MR ND NANAVATI for Appellant(s) : 1,
None for Defendant(s) : 1,
MR AJAY R MEHTA for Defendant(s) : 2,

==========

CORAM : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

Date : 06/02/2007

ORAL JUDGMENT

Original claimant has approached this Court by filing this appeal to seek enhancement of the compensation awarded by the Motor Accident

Claims Tribunal, Panchmahals at Godhra by award dated 15/3/1993 made in M.A.C. Petition No. 713/1985. The Tribunal has awarded sum of Rs.32,500/- together with interest at the rate of 15% per annum from 6/2/1985 till the deposit of the amount and proportionate costs. This sum has been awarded against the claim of Rs.95,000/-.

2. The appellant sustained injuries in a vehicular accident which occurred on 12/9/1984 at about 5.30 p.m. On that day he was knocked down by vehicle, namely tempo bearing registration No. GTK 5363 which was driven by respondent no. 1, who also happened to be the owner of the vehicle. As a result of the same, the appellant sustained serious injuries and he was removed initially to Cottage hospital at Lunavada and from there he was shifted to Sayaji Hospital at Vadodara. He remained as indoor patient from 13/8/1984 till 25/9/1984. He was operated upon on 13th itself and on 24th September, 1984 there was skin grafting done. He, therefore, filed the claim petition for obtaining compensation.

2.1. It was resisted by the respondent no. 2 – Insurance Company by filing written statement at Exh. 11. All the averments made in the petition with regard to negligence of respondent no. 1 were denied. Respondent no. 1 did not file any written statement.

2.2. Before the Tribunal, oral as well as documentary evidence was led by the appellant. On the basis of the material produced before it, the Tribunal held that respondent no. 1 was solely negligent and on account of his negligence, the accident occurred. It also determined the compensation at Rs.32,500/-. The appellant, since he is not satisfied with the quantum of compensation, has approached this Court for enhancement of it.

3. Mr. Niraj D Buch, learned advocate for the appellant has submitted that considering the injuries suffered by the appellant and the resultant effect, he ought to have received more compensation than the amount awarded by the Tribunal. He has further submitted that the Tribunal has erroneously not considered the future loss of income.

3.1. As against that, Mr. AR Mehta, learned advocate for the respondent – Insurance Company has supported the judgment of the Tribunal and has submitted that there is no need for the Court to interfere with the judgment.

4. I have carefully considered the rival submissions. There is no dispute that the appellant received injuries in a vehicular accident which took place on 12/9/1984. There is also no dispute that the offending vehicle was

involved in the accident. However, the dispute is only with regard to the negligence of respondent no. 1 and the quantum of compensation. So far as the conclusion drawn by the Tribunal with regard to negligence of respondent no. 1 is concerned, the said finding is neither challenged by respondent no. 1 nor by respondent no. 2. It has, therefore, become final. I have perused the discussion on the said issue and in my opinion the conclusion drawn by the Court is proper and it is not required to be disturbed. Hence, I also hold that it was respondent no. 1 who was negligent in driving the vehicle and the resultant accident.

4.1. So far as the quantum of compensation is concerned, by and large the amounts awarded by the Tribunal under different heads are just and proper. However, the error has been committed by the Tribunal on the issue of loss of prospective income. There are two certificates furnished by the appellant to substantiate his say regarding the injuries and the consequential handicap suffered by him. The Tribunal has relied on the certificate issued by Dr. Nagpal, who treated the appellant when he was hospitalized. Though the Tribunal has referred to and discussed the certificate issued by Dr. S.S. Gandhi, it appears that it has failed to exhibit it. Mr. Buch, therefore, requested the Court to take it on record and exhibit it. Considering the fact that the Tribunal has also extensively referred to it, it ought to have exhibited it at the trial stage, but since that has not been done, this Court can do it and the certificate is taken

on record and it is given Exh. 19/A. Both these certificates show that the disability suffered by the appellant was to the extent of 70%. However, in the opinion of Dr. Nagpal, it was temporary disability and it would go away with the passage of time, but that has not happened since the appellant was examined by Dr. Gandhi after a period of three and half years and he has also found several restrictions in the movement of different limbs of the appellant and overall disability assessed by him is to the extent of 70%. He has treated it to be partial permanent physical disability. However, in the course of hearing, the learned counsels appearing for the parties before the Tribunal, by consensus determined the disability at 17.5%. From the point of view of convenience, I assess it at 18%. The Tribunal has awarded a sum of Rs.5,000/- for disability considering to be of temporary nature, but for the foregoing discussion, it appears that the disability is of permanent nature and, therefore, the Tribunal ought to have assessed the future loss of income. That has not been done. I, therefore, carry out that exercise here. Considering the fact that the income of the appellant at the relevant time was Rs.250/- to Rs.300/- per month, the future income can safely be assessed at Rs.500/-. Therefore, the monthly loss would be Rs.90/- and the annual loss would be Rs.1,080/-. Considering the age of the appellant, multiplier of 18 is applied. The loss of prospective income would be Rs.19,440/-. If amount of Rs.5,000/- which is already awarded by the Tribunal for disability is deducted, the additional amount that could be awarded to the appellant would be Rs.14,440/-. The appellant is, therefore, entitled to receive

Rs.14,440/- by way of additional compensation together with interest and costs as awarded by the Tribunal.

This appeal is, therefore, partly allowed.

[Akshay H Mehta, J.]

* Pansala.